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Letter dated 14 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/463). The Counter-Terrorism Committee has received the attached third report from Myanmar submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 6 April 2004 from the Permanent Representative of Myanmar to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter of 11 April 2003, I have the honour to transmit herewith the third report from the Government of the Union of Myanmar in reply to the questions raised by the Counter-Terrorism Committee, pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Kyaw Tint **Swe**
Ambassador
Permanent Representative

Enclosure

Third report of the Union of Myanmar to the Counter-Terrorism Committee, pursuant to paragraph 6 of resolution 1373 (2001)

Response and clarification with reference to the letter of the Chairman of the Counter-Terrorism Committee dated 11 April 2003

Question 1.2

With regard to effective implementation of sub-paragraph 1(b) of the Resolution 1373 (2001), the Penal Code (1861), the Emergency Provisions Act (1950) and the Unlawful Associations Act (1908) have legal provisions that meet the requirements mentioned in question 1.2. Legal action can be taken against persons depending on the severity of the criminal acts. Under Section 109, 114 and 511 of the Penal Code, legal action can also be taken against persons who abet or support or conspire to commit terrorist acts. The provisions of the Penal Code are as follows:

(a) **Section 109** - Whoever abets any offence shall, if the act abetted is committed in consequences of the abetment, and no express provision is made by this Code of the punishment of such abetment, be punished with the punishment provided for the offence.

(b) **Section 114** - Whenever any person, who if absent would be liable punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

(c) **Section 511** - Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Question 1.3

With regard to the requirement of sub-paragraph 1(c) of the Resolution, the Central Bank of Myanmar has issued Directive No. 2/2002 dated 7 March 2002 by which all State-owned and private banks are instructed to freeze accounts if they are found to be held in the names of persons and entities as mentioned in question 1.3 of the CTC Chairman's letter. The Central Bank of Myanmar has

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* Annexes are on file with the Secretariat and are available for consultation.

the authority to issue legally binding Central Bank Directives. Directive 2/2002 has been submitted in the second report of Myanmar.

Question 1.4

Regarding the seizure of properties related to terrorist groups and individuals, legal action can be taken under section 5 of the Emergency Provisions Act of 1950, section 17 of the Unlawful Associations Act of 1908 and other relevant laws, to meet the requirements mentioned in question 1.4. In addition, proceeds of crimes can also be seized. Abetment of terrorist acts can also be criminalized and properties seized under the provisions of section 109, 114, 511 of the Penal Code. (See above)

Question 1.5

The obligations to report are covered by the Control of Money Laundering Law, Chapter IX, Section 19. The Control of Money Laundering Rules, chapter III, Article 6 (c) further clarifies that information on illegal financial transactions must be reported to the Central Control Board by the Financial Intelligence Unit.

Question 1.6

Financial Intelligence Unit was already formed by Order No.3/2004 dated 16 January 2004 of the Central Control Board and the Unit is already operational. According to Directive No.1/2004 dated 12 January 2004 of the Central Control Board, all the banks and financial institutions have duties to report suspicious transactions and according to Directive No.2/2004 of 12 January 2004 by the Central Control Board, the Department of Settlement and Land Records is under an obligation to report suspicious transactions. All suspicious transactions must be reported to the Central Control Board.

Question 1.7

According to Directives No. 1/2004 and 2/2004 of the Central Control Board, report of suspicious transactions must be made relating to not only to suspected money-laundering activities but also other suspected activities. The Directives stipulate that transactions of hundred million *kyats* and over must be reported. In addition, even though the amount of the transaction is less than hundred million *kyats*, it must be reported if it is suspicious. The Directives are issued in accordance with the decision of the cabinet meeting of the Government of the Union of Myanmar No.2/2004 dated 8 January 2004.

Question 1.8

The monitoring mechanism is operated by the Department of Internal Audit and Bank Supervision of the Central Bank of Myanmar. Bank Supervisory Committee is also formed for the monitoring and security mechanism. Consolidated list of individuals and entities belonging to or associated with the Taliban and Al-Qaida organization are circulated among the State-owned and private banks. These banks are obliged to report to the Central Control Board if they find transactions

linked to the consolidated list. That is stipulated by the Directive No.2/2002 dated 7 March 2002 of the Central Bank of Myanmar.

Question 1.9

Chapter 3 of the Money Laundering Law stipulates that undertakings of a financial institution, including money transmission agencies, without the license issued by the Central Bank of Myanmar, is considered a criminal offence. Financial institutions with the license must undertake to operate in accordance with the instructions issued by the Central Bank. Undertakings with regard to foreign exchange are executed only by the State-owned banks. These State-owned banks strictly abide by the rules and regulations of the Bank for International Settlements. According to the Foreign Exchange Regulation Act (1947), transactions of foreign exchange is controlled by the Central Bank of Myanmar. The Central Bank has issued a directive to strictly scrutinize domestic and overseas foreign exchange transactions and transfers.

Question 1.10

Unlawful Associations Act (1908) and Emergency Provisions Act (1950) meet the requirement of the implementation of sub-paragraphs 2 (d) and (e) of the Resolution 1373 (2001). Unlawful association means an association which encourages or aids a person to commit acts of violence or intimidation or of which members habitually commit such acts. It is stipulated that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, or whoever manages or assists in the management of an unlawful association shall be punished with imprisonment for a term of maximum five years. Full text of the Emergency Provisions Act (1950) was submitted as Annex D of the Second report by Myanmar. Under these laws, terrorist acts are regarded as serious criminal offences and are punishable by sentences ranging from 7 years imprisonment to the death penalty. Financing, planning and facilitating terrorist acts are also regarded as criminal offences and therefore punishable.

Question 1.11

Regarding the manufacturing, sale, possession, storage, transportation, import and export of arms and explosive substances, legal action can be taken against those committing an offence, abetment and attempt to commit a crime. The provisions are as follows:-

(a) **Manufacturing** Whoever manufactures arms and explosive substance without permission, shall be punished with imprisonment of 3 years in accordance with section 19(a) of the Arms Act (1878) and with imprisonment of 3 years of section 5 of the Explosive Substance Act (1908) or fine.

(b) **Sale** Whoever conducts sale of arms and ammunition without permission, shall be punished with imprisonment of 3 years of fine or both in accordance with section 19 of the Arms Act (1878). Where the arms and ammunition are owned by government, offender shall be punished with death sentence or life imprisonment or

rigorous imprisonment for a term not exceeding 10 years in accordance with section 2 of the Arms Emergency Act (1949).

(c) **Possession -** Whoever possesses arms and ammunition without permission, shall be punished with imprisonment of 3 years or fine or both in accordance with section 19 of the Arms Act (1878). Whoever possesses explosive substance, shall be punished with imprisonment of 14 years and fine in accordance with section 5 of the Explosive Substances Act (1908).

(d) **Storage -** Whoever stores arms and ammunition without permission, shall be punished with imprisonment of 3 years or fine or both or up to 7 years in accordance with section 19(a) of the Arms (Temporary Amendment) Act (1951).

(e) **Transportation -** Whoever transports arms and ammunition without permission, shall be punished with imprisonment of 3 years or fine or both in accordance with section 19 of the Arms Act (1878). Whoever transports explosive substance without permission, shall be punished with imprisonment of 20 years and fine in accordance with section 4 of the Explosive Substances Act (1908).

(f) **Import/Export -** Whoever imports arms from abroad and exports to another country illegally shall be punished with imprisonment of 3 years or fine or both by section 19 of the Arms Act (1878).

(g) **Committing the offence, Abetment and Attempt -** Whoever is in violation of the mentioned offences, shall be punished with imprisonment or death sentence or life imprisonment or rigorous imprisonment for a term which may extend to 10 years under section 2 of the Arms Emergency Act (1949). Whoever commits the offence of explosive substances shall be punished with imprisonment of 14 years under section 4 of the Explosive Substances Act (1908).

Question 1.12

According to the Atomic Energy Act (1998), producing, utilizing, storage, distributing, export and import of nuclear, radio active materials or instruments of radio active materials shall be punished with imprisonment of 7 years and fine. Moreover, the assets can be confiscated by the State.

Myanmar, as a member of ASEAN, has been participating in countering international terrorism under the framework of ASEAN.

Question 1.13

Believing that the effective exchange of information is important to counter terrorism, Myanmar has established an information network, for collecting and exchanging of information, under the National Intelligence Bureau. It has also established lines of communication with ASEAN

and INTERPOL member countries on uninterrupted daily basis for exchange of information on counter terrorism.

Question 1.14

Among the 12 international instruments relating to terrorism, Myanmar has already acceded to 7 Conventions/ Protocols and signed the Convention for Suppression of Financing of Terrorism. It has been already approved by the Government of Myanmar to accede to a further three Conventions while it is studying technical details of the remaining Conventions.

There are domestic laws related to the international instruments on terrorism. They are as follows:

(a) The Unlawful Associations Act (1908)
(b) The Emergency Provisions Act (1950)
(c) The Penal Code (1861)
(d) The Control of Money Laundering Law (2002)
(e) The Law for Taking Action Against Owning and Marketing of Properties Obtained by Unlawful Means (1986)
(f) The Atomic Energy Act (1998)
(g) The Explosives Act (1884)
(h) The Explosive Substances Act (1908)
(i) The Arms Emergency Act (1949)
(j) The Arms (Temporary) Amendment Act (1951)
(k) The Public Order Preservation Act (1947)
(l) The Law Safeguarding the State from Danger of Subversive Elements (1975)

Question 1.15

Although Myanmar has not signed extradition treaty with any country, it is coordinating with the neighbouring countries on case-by-case basis. The offences committed by nationals or foreigners are being dealt with effectively under the domestic laws of Myanmar. With regard to fugitives of major crimes from other countries who fled to our country, Myanmar coordinates on a case by case basis with neighbouring countries. There have already been a number of instances where fugitives were returned to the authorities from their respective countries. The fugitives are with regard to the offences of narcotic trafficking and other transnational crimes. Myanmar has returned 23 fugitives to the People's Republic of China, one fugitive to Thailand and 2 fugitives to India.

Question 1.16

Myanmar's response to the questionnaire by United Nations Office on Drugs and Crime is attached as Annex.